IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 920 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
MUKESH MEGHJI MUCHHADIYA & 2

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Appearance :
MR KC SHAH APP for Appellant
MR SHIVANG J SHUKLA for Respondents No.1-3.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 10/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This criminal appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, 11th Fast Track Court, District : Rajkot on 13th August, 2004 in Sessions Case No.10/2004 whereby the present respondents being accused of the said Sessions Case came to be acquitted by the trial Court for the offences punishable under Sections 307, 328, 323 to read with Section 114 of the Indian Penal Code. According to the prosecution case, on 7th July, 2003 complainant Aalabhai Bavjibhai with his son Ashwin and his nephew Ajay was coming back by auto rickshaw bearing Registration No.GJ-3-X-9667 from Rajkot and were going to their

village Dhokadia. When they came near one culvert at about 8.30 p.m. near the field of one Raghubhai Makanbhai, they found one bicycle lying and obstructing the road. Complainant Aalabhai Bavjibhai requested his son Ashwin to remove cycle from the road. At that time Ashwin got down from the rickshaw and while he was removing the bicycle from the road, son of complainant's brother named as Pankaj - accused No.2, Mukesh - accused No.1 and Bhaniben - accused No.3 came running near rickshaw and Pankaj snatched bicycle from Ashwin. Pankaj and Mukesh both started beating complainant with kicks and fists. Accused No.1 – Mukesh caught hold the face of the complainant and accused No.3 – Bhaniben took out one tin from her and from that tin, she poured poison in the mouth of the complainant. The complainant resisted and, therefore, the tin was fallen down on the ground. In the meantime, Ashwin and Ajay both ran towards the village, but the complainant

had consumed some portion of poison and during that period, one motorcycle with headlight on, passed through that road and seeing the motorcycle, accused ran away from that place. The motorcycle had passed away from that spot. Complainant felt the effect of the poison and started vomiting and was lying near culvert and other persons Mohan Samji, Pravin Premji etc. came at the spot along with Shantilal son of the complainant. Complainant was shifted to Government Hospital at Rajkot and was admitted and examined by Government Doctor. He was discharged from the Hospital on 9th July, 2003 at 12.30 and, thereafter, on 10th July, 2003, complaint was given by the complainant before the police. According to the complainant, cause of the incident was of a dispute between complainant and the accused about the land which followed with other litigations between the parties. The investigation was handed over to PSI Mansingh Hemubha Jadeja

and, thereafter, to PSI B.J. Gamoti, who filed charge-sheet against all the three accused.

2. A charge came to be framed for the above offences against all the three respondents by learned trial Judge on 3rd March, 2004 vide Ex.6 to which all the three accused pleaded not guilty and, therefore, prosecution examined as many as 19 witnesses and produced on record documentary evidence. In statements recorded by the trial Court of the accused under Section 313 of the Code of Criminal Procedure, the accused stated that a false case had been filed against them as all the three were residing at Rajkot at relevant juncture and were not present at the scene of offence. After hearing learned APP and the defence counsel, the learned trial Judge came to the above conclusion of acquitting the accused of all the charges and hence, this appeal.

3. Learned APP on behalf of the State submitted that there was enmity between the parties and that has come on record. The complainant and two witnesses Ajay and Ashwin have supported and corroborated the say of the complainant and no reasons were assigned by the learned trial Judge for disbelieving them. The complainant himself is a victim of the incident and while, he was returning from Rajkot in his rickshaw the incident took place in which he identified all the accused. It is submitted that medical evidence corroborated the say of the complainant and hence, the conclusion arrived at by the trial Court is palpably erroneous and the matter requires consideration.

4. We have gone through the Record & Proceedings of the trial Court, which is available with us and we have considered vital features of the case and broad reasonable probabilities of the case even at this juncture also. We have gone through the evidence recorded and

conclusion arrived at by the trial Court minutely and carefully.

5. It is, therefore, even at this juncture necessary to record the gist of the prosecution evidence and reasons assigned by the trial Court for acquittal of the accused.

6. The main witnesses of the prosecution are **P.W.2** - Aalabhai Bavjibhai, Ex.21 - complainant, **P.W.3** - Ajay Rameshbhai Muchhadiya, Ex.25 – alleged eye witness, and **P.W.4** – Ashwin Aalabhai, Ex.26 also alleged eye witness.

7. **P.W.2** – Aalabhai Bavjibhai, complainant, vide Ex.21 deposed before the Court that with Ajay and Ashwin, he had been to Rajkot from Dhokadia in rickshaw with T.V. set for getting the same repaired at Rajkot. They handed over T.V. set for repairing. At 7.30 p.m., they had plied rickshaw at Rajkot. At about 7.30 p.m., they started from Rajkot for Dhokadia in rickshaw. He found a cycle lying

and obstructing the road and, therefore, Ashwin was asked by the complainant to remove cycle from the road. At that time accused came and accused No.2 snatched cycle from the Ashwin and other two accused started beating him. On seeing one motorcycle coming on the road, all the three of them ran way. Accused – Mukesh caught hold of his face and accused No.3 – Bhaniben poured poison in his mouth. In the meantime, the tin contained poison fallen on the ground from the hands of the Bhaniben. Ashwin and Ajay ran away from the spot and went to the village and called other persons, while, he himself fell down and lied down on culvert. He started vomiting and, thereafter, his son and other persons came at the spot and he was shifted to the hospital.

8. **P.W.3** – Ajay Rameshbhai Muchhadiya in his deposition at Ex.25 stated that at the time of incident, all the three accused came and started beating complainant, but how the complainant was beaten, has not been stated

by this witness. According to him, at that time, headlight of the rickshaw was on and in the light of the said headlight, he witnessed the incident. He did not state anything about the possible attempt on the part of the accused to pour poison in the mouth of the complainant. Likewise **P.W.4** – Ashwin Aalabhai examined at Ex.26, stated that at the time of the incident, while he was removing bicycle from the road, accused – Pankaj came there and snatched away cycle from his hand, thereafter, the witness started running. When he looked after, he found that accused Bhaniben and accused Mukesh were beating the complainant and, therefore, he ran away from the spot and went to his village, he conveyed his uncle, mother etc. about the incident.

9. **P.W.1** – Dr. Navinchandra Nanalal Joshi, who treated complainant, deposed vide Ex.16 that when he was on duty in Civil Hospital at Rajkot on 7th July, 2003, at about 9.25 p.m.

complainant was brought before him for treatment. He gave history about consuming poison. Pt. was conscious, Pupils were normal, heart and lungs were normal. There was no smell from his mouth. He was admitted in Ward No.11 for observation and was discharged on 9th July, 2003. He produced on record certificate to this effect at Ex.17. He stated that the patient gave history of poison and he immediately treated the patient accordingly and a sample of stomach wash obtained and was sent to Chemical Analyzer. He produced forwarding form at Ex.18.

10. The complaint of the complainant is placed at Ex.22. **P.W.6** – Sukhdevsinh Dolubha Chudasama examined at Ex.28, is a person to whom the complainant had delivered his T.V. Set for repairing. **P.W.7** – Raghubhai Makabhai Vasjadiya examined at Ex.29, is a person having agricultural land near the scene of offence. But he stated that he had heard

about the incident, but not had witnessed. **P.W.8** – Hirabhai Bavjibhai examined at Ex.30, is brother of the complainant and reached at the scene of offence as informed by Ashvin and Ajay and found that the complainant was lying on culvert and was vomiting. **P.W.9** – Ashwinbhai Chhabildas Doshi examined at Ex.31 is the panch of arrest panchnama at Ex.32, but this witness has not supported the prosecution case. **P.W.10** – Jitendrabhai Raghubhai Rathod examined at Ex.33, is also panch of arrest panchnama at Ex.32 and has not supported the prosecution case. **P.W.11** – Manjibhai Devshibhai Mchhadiya examined at Ex.34, is a panch of panchnama of scene of offence, placed at Ex.35 and he stated that he was called at scene of offence and panchnama was prepared and the place of scene of offence was shown by the complainant to him. **P.W.12** – Rameshbhai Bavjibhai Muchhadiya, examined at Ex.36, is also a brother of the complainant and was called at

the scene of offence, after incident was over and complainant conveyed to him about the incident. **P.W.13** – Ashokbhai Ramjibhai Solanki, examined at Ex.37 was at relevant time a Head Constable of Pradhyumannagar Police Station and according to him on 9th July, 2003 he received one entry about the M.L.C. Case and since the incident was within the jurisdiction of Padadhari Police Station, he recorded the statement of the complainant and forwarded the papers to Padadhari Police Station. **P.W.14** – Devrajbhai Hemrajbhai Nakada examined at Ex.38, was the then Police Constable of Padadhari Police Station, who produced original papers from Padadhari Police Station vide Ex.29 and these papers pertain to the criminal litigation and proceedings initiated by the police for maintaining breach of peace between the parties. **P.W.15** – Mohanbhai Ramjibhai Muchhadiya examined at Ex.40, is a witness, who was called at scene of offence after the

incident was over and he heard about the incident. **P.W.16** – Mansukhbhai Premjibhai Muchhadiya examined at Ex.41, is also a witness, who reached at the scene of offence, after the incident was over. **P.W.17** – Jentilal Premjibhai Rathod examined at Ex.44, was the then PSO, who recorded the complaint of the complainant on 10th July, 2003 at 18.45 hours in the Station Diary of Padadhari Police Station and he entrusted the investigation to ASI Mansingh Hemubha Jadeja. Mansingh Hemubha Jadeja, who initially investigated the crime, is examined as **P.W.18** at Ex.46 and second Investigating Officer, who filed charge-sheet is examined as **P.W.19** – Bachuji Jivaji Gamit at Ex.48. This is all the evidence of the prosecution.

11. From the above evidence, while appreciating and discussing the evidence, the learned trial Judge came to the conclusion that according to the medical evidence Dr. Navinchandra Nanalal Joshi did not find any

symptoms of poison consumed by complainant. Complainant was admitted to the Hospital for observation and stomach wash, which was sent to Chemical Analyzer and the analysis in this respect revealed no ingredients of any poison and relevant opinion of Chemical Analyzer is placed at Ex.52. The learned trial Judge, therefore, came to the conclusion that there was no medical evidence as to consumption of poison by the complainant and the evidence of the complainant had weakened in this respect. While assessing the evidence of the complainant, the learned trial Judge found that the evidence of the complainant was full of contradiction and confusion. In his cross-examination, improving the story, he stated that Ashwin alone attempted to remove cycle and accused Pankaj and Mukesh started beating Ashwin. While in his examination-in-chief, complainant stated that accused – Bhaniben and accused – Mukesh started beating him. In his examination-in-cross, again improving a

story, he stated that all three accused started beating him and stated that as soon as complainant halted his rickshaw, all the three accused snatched him and started beating. Whatever he stated in examination-in-chief, he changed the story in examination-in-cross. He did not stick to the story which he narrated in the complaint that Ashwin got down from rickshaw and while he was removing bicycle, accused – Pankaj snatched away bicycle from Ashwin and Pankaj and Mukesh started beating Ashwin. He omitted to state in his deposition that tin held by Bhaniben was fallen on the ground because he resisted. His evidence is not corroborated by other two witnesses i.e. Ajay and Ashwin and both witnesses are related to the complainant, but none of the witnesses stated that accused forcibly attempted to pour poison in the mouth of the complainant. Even the fact of the motorcycle passing on the road has not been stated by any of these two

witnesses. The learned trial Judge, therefore, as he has discussed this contradiction in para-12 of his judgment, came to the conclusion that the story of the complainant could not be believed because he is not supported by the medical evidence and other witnesses. The learned trial Judge came to the conclusion that the complainant himself changed his version more than once in his deposition. In para-13 of the judgment, the learned trial Judge has also appreciated the evidence of witnesses Ajay and Ashwin and stated that none of the witnesses not only refrained from corroborating the complainant, but narrated the incident in different manner as both the witnesses stated that they noticed incident in the light of the rickshaw. This fact they did not state in their statements before police, it is the conclusion of the learned trial Judge that the witness Ajay was minor and in cross-examination, he stated that he

came for deposition at the instance of his father and, therefore, possibility cannot be ruled out that he was a tutored witness. The learned trial Judge came to the conclusion that the other witnesses, examined by the prosecution, except three panch witnesses and three police witnesses, are the witnesses who did not show the incident but reached afterward and these witnesses are not helpful to the prosecution case. The learned trial Judge concluded that three panch witnesses were formal and out of them two have turned hostile. Thereafter, the evidence of police officers are to the effect that a crime was registered and investigation was carried out. One witness produced on record papers denoting that there was previous enmity between the parties about the plot of land for which there were *inter se* criminal as well as civil litigations and hence, the learned trial Judge came to the conclusion that appreciating the evidence of the case in

totality and considering the evidence of the complainant as well as two eye witnesses, the prosecution could not prove the case beyond doubt as the evidence of these three witnesses is full of contradiction and not reliable. There was enmity between the parties about the plot of land. The learned trial Judge also came to the conclusion that there was dark at the time of incident and there was no possibility that accused could have been identified by the witnesses and, therefore, the accused came to be acquitted by the trial Court.

12. This is an appeal against the acquittal, though we have gone through each corner of the prosecution case and on re-appreciation also we are unable to take different view, than the view taken by the learned trial Judge. Even if from the evidence of the prosecution, if second view is possible, the order of acquittal cannot be interfered with only because the second view is possible.

Unless it is found that the findings arrived at by the trial Court is palpably wrong, perverse and demonstrably unsustainable, no interference is permitted in an appeal against the order of acquittal. We find that the conclusion and findings arrived at by the trial Court from the evidence recorded during the trial and through proper appreciation of evidence as the prosecution case suffered serious infirmities as discussed above. The view taken by the trial Court is reasonable and possible from the circumstances of the case. It could not be said that the findings are perverse, palpably wrong and demonstrably unsustainable. Therefore, even at this juncture also, we find that the judgment and order impugned in this appeal requires no interference at all and hence, the following order is passed.

Leave to appeal is refused. Appeal stands dismissed.

[J. R. VORA,J.]

[BANKIM.N.MEHTA,J.]

(vijay)